

RECEIVED

04 NOV 10 PM 1:07

FEDERAL MARITIME COMMISSION

Phone: 202-772-5918
Fax: 202-572-8364
Email: Dyer-a@blankrome.com

November 10, 2004

BY HAND

Bryant L. VanBrakle
Office of the Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Room 1046
Washington, D.C. 20573

Date 11/10/04
Check # 11674
Amount 228
mpd

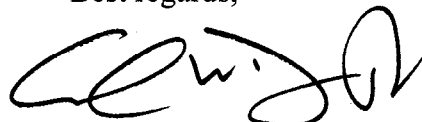
Re: Petition by China Shipping Container Lines (Hong Kong) Co., Limited

Dear Mr. VanBrakle:

On behalf of our client, China Shipping Container Lines (Hong Kong) Co., Limited ("CSCL (Hong Kong)"), we submit the enclosed petition for an exemption from the first sentence of section 9(c) of the Shipping Act of 1984.

CSCL (Hong Kong) intends to begin operating in the U.S. foreign trade on or about January 1, 2005. Giving the short time frame, please do not hesitate to contact me with any questions that may arise during the course of your review.

Best regards,



Andrew W. Dyer, Jr.

cc: Stacey Evans, Esq.
Office of the General Counsel
Room 1018

ORIGINAL

BEFORE THE FEDERAL MARITIME COMMISSION

CC: OS/OGC
Public
Chairman
Commissioner
(4)

04 NOV 10 PM 1:07 OP

BCL
BOE
BTA
OA

PETITION of

CHINA SHIPPING
CONTAINER LINES (HONG KONG) CO., LTD.

for an

EXEMPTION FROM THE FIRST SENTENCE
OF SECTION 9(c) OF THE SHIPPING ACT

Petition No. P6-04

China Shipping Container Lines (Hong Kong) Co., Ltd. ("CSCL (Hong Kong)") is a wholly owned subsidiary of China Shipping Container Lines Co. Ltd. ("CSCL"). As such, CSCL (Hong Kong) is a "controlled carrier" as that term is defined in Section 3(8) of the Shipping Act of 1984, 46 U.S.C. app. Section 1701, et seq. (the "Act"). As a controlled carrier, CSCL is subject to the restrictions contained in Section 9 of the Act (also known as the "Controlled Carrier Act"), including the restriction that prevents controlled carriers from reducing their tariff rates on less than 30 days notice.

By this Petition, CSCL (Hong Kong) requests an exemption from the first sentence of Section 9(c) of the Act so that it may reduce its tariff rates upon publication. This exemption would not affect the basic requirement of the Controlled Carrier Act, which is that all controlled carriers charge just and reasonable rates. It would only eliminate the requirement that CSCL (Hong Kong) wait 30 days to reduce its tariff rates. The exemption would therefore put CSCL (Hong Kong) on an equal footing with non-controlled carriers with respect to its ability to implement tariff rate reductions.

Background

By Petition No. P4-03, filed on July 31, 2003 (the “CSCL Petition”), CSCL requested an exemption from the first sentence of Section 9(c) of the Act so that it could reduce its tariff rates upon publication. On April 1, 2004, the Federal Maritime Commission (“Commission”) issued an order (the “Order”) granting CSCL’s petition. In doing so, the Commission found that the requested exemption did not substantially reduce competition and was not detrimental to commerce. As a result of the Order, CSCL is now able to reduce its tariff rates upon publication.

In July 2002, CSCL (Hong Kong) was formed as a wholly owned subsidiary of CSCL. The formation of CSCL (Hong Kong) was part of an internal corporate restructuring that has involved the transfer of some CSCL services to CSCL (Hong Kong) and the initiation of new services by CSCL (Hong Kong). Both CSCL and CSCL (Hong Kong) now operate as vessel operating common carriers under the China Shipping trade name and trademarks.

To date, CSCL (Hong Kong) has operated only outside the U.S. trades. However, beginning on or about January 1, 2005, CSCL (Hong Kong) will commence operations in the U.S. trades. So that it may operate in the U.S. trades on the same terms available to its parent company CSCL, including the ability to reduce its tariff rates upon publication, CSCL (Hong Kong) requests that the Commission grant it an exemption from the first sentence of Section 9(c) of the Act so that it may reduce its tariff rates upon publication.

Discussion

Under Section 8(d) of the Act, all carriers, both controlled and non-controlled carriers, must give 30 days notice to increase their tariff rates. However, the last sentence of Section 8(d) provides that “[a] change in an existing rate that results in a decreased cost to the shipper may become effective upon publication.”

Only controlled carriers are subject to the further restrictions contained at Section 9 of the Act. One of those restrictions, contained in the first sentence of Section 9(c), states that “[n]otwithstanding section 8(d) of the Act . . . the rates, charges, classifications, rules, or regulations of controlled carriers may not, without special permission of the Commission, become effective sooner than the 30th day after the date of publication.” 46 U.S.C. app. § 1708(c). The effect of this sentence, which is applicable only to controlled carriers, is to require that controlled carriers wait 30 days to increase *or decrease* their tariff rates, while non-controlled carriers can reduce their tariff rates upon publication.

Section 16 of the Act (46 U.S.C. app. § 1715) provides that the Commission may exempt any class of agreements between persons subject to the Act or any specified activity of those persons from any requirement of the Act upon a determination that the exemption (1) will not result in substantial reduction in competition or (2) be detrimental to commerce. For the reasons explained below, CSCL (Hong Kong) believes these requirements are met in this case.

In essence, CSCL (Hong Kong) is eligible for the requested exemption for the same reasons set forth in the CSCL Petition. As demonstrated in the CSCL Petition, granting the exemption would not reduce competition. In fact, enabling CSCL (Hong

Kong) to reduce its rates upon publication to meet the demands of a changing market would increase competition, not reduce it. Put differently, without an exemption, CSCL (Hong Kong) will be unable to react meaningfully to changes in market conditions and will be unable to effectively and fairly compete on equal terms with non-controlled carriers and those controlled carriers that have been granted exemptions of this type, most of whom are significant competitors to CSCL (Hong Kong).¹

The requirement that the exemption not be “detrimental to commerce” is also met. Rather than being detrimental to commerce, the requested exemption would actually promote commerce by providing shippers with more options than are currently available. As the Commission noted in the Order, several shippers, including the Agriculture Ocean Transportation Coalition, the Unaffiliated Shippers of America, Inc., and ShipUsofA.COM, supported CSCL’s petition for, among other reasons, the mere fact that an exemption would permit CSCL to compete in certain trades by offering competitive rates in a timely matter. This same rationale would also apply to CSCL (Hong Kong), as the customer base of CSCL and CSCL (Hong Kong) overlap to a certain extent.

A failure to grant the requested exemption would also cause potential confusion among the customers of China Shipping. As explained above, CSCL and CSCL (Hong Kong) operate under the same China Shipping trade name and trademarks. Although the two carriers are separate and distinct legal entities, there is little or no difference in their

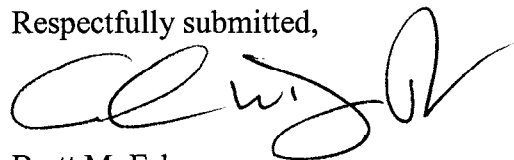
¹ The Commission has recently granted several exemptions of this type in orders related to Petitions P3-99 (China Ocean Shipping (Group) Co.), P6-03 (Sinotrans Container Lines Co., Ltd.), and P5-04 (American President Lines, Ltd.).

mode of operation. In fact, in the U.S. trades, CSCL and CSCL (Hong Kong) intend to publish a common tariff. Pursuant to an Alliance Agreement between the two companies, CSCL intends to ask its service contract customers to amend their service contracts to include CSCL (Hong Kong) as an additional carrier party. This will enable both carriers to lawfully carry cargo for the shipper customer at the service contract rates. These service contracts incorporate the terms of the CSCL tariffs of general applicability. Therefore, a failure to grant the exemption requested by CSCL (Hong Kong) would prevent CSCL and CSCL (Hong Kong) from publishing a common tariff and entering into joint service contracts, which would be potentially confusing and disruptive to China Shipping's customers.

Conclusion

For the reasons explained above, CSCL (Hong Kong) respectfully submits that the requested exemption from the Controlled Carrier Act will not result in a reduction in competition or be detrimental to commerce, and should therefore be granted.

Respectfully submitted,



Brett M. Esber
Andrew W. Dyer, Jr.
Blank Rome LLP
600 New Hampshire Ave., N.W.
Washington, D.C. 20037
Counsel for
China Shipping Container Lines
(Hong Kong) Co., Limited

November 10, 2004